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 11
 12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

14 Coordination Proceeding
 15 Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding
 No. 4408

16 ANTELOPE VALLEY GROUNDWATER
 17 CASES

SC Case No. 105CV 049053
 Assigned to the Honorable Jack Komar

18 Included Actions:

19 Los Angeles County Waterworks District
 20 No. 40 v. Diamond Farming Co.
 21 Superior Court of California
 22 County of Los Angeles, Case No. BC
 23 325201

ANSWER OF CROSS-DEFENDANT
 ANTELOPE VALLEY WATER STORAGE
 LLC TO FIRST AMENDED CROSS-
 COMPLAINT OF PUBLIC WATER
 SUPPLIERS

24 Los Angeles County Waterworks District
 25 No. 40 v. Diamond Farming Co.
 26 Superior Court of California, County of
 27 Kern, Case No. S-1500-CV 254348

28 Wm. Bolthouse Farms, Inc. v. City of
 Lancaster Diamond Farming Co. v. City of
 Lancaster Diamond Farming Co. v. Palmdale
 Water Dist. Superior Court of California,
 County of Riverside, consolidated actions,
 Case Nos. RIC 353840, RIC 344436, RIC
 344668

29 Cross-Defendant ANTELOPE VALLEY WATER STORAGE LLC ("AVWS") answers
 30 the unverified First Amended Cross-Complaint of Public Water Suppliers (hereinafter "Cross-
 31

Complainant"), as follows:

1. AVWS is a limited liability company doing business in California.
2. Pursuant to California Code of Civil Procedure Section 431.30(d), AVWS

generally denies each and every allegation set forth in the First Amended Cross-Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The First Amended Cross-Complaint, and each cause of action thereof, fails to state facts sufficient to constitute a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The First Amended Cross-Complaint, and each cause of action therein, is barred by the equitable doctrines of res judicata and collateral estoppel.

THIRD AFFIRMATIVE DEFENSE

Each and every cause of action contained in the First Amended Cross-Complaint is barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Each and every cause of action contained in the First Amended Cross-Complaint is barred by the doctrine of equitable estoppel.

FIFTH AFFIRMATIVE DEFENSE

Each and every cause of action contained in the First Amended Cross-Complaint is barred by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

Each and every cause of action contained in the First Amended Cross-Complaint is barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Cross-Complainant has delayed an unreasonable period of time in bringing this action, which delay has been so prejudicial to AVWS so as to bar-Cross-Complainants from any recovery in this action.

EIGHTH AFFIRMATIVE DEFENSE

Cross-Complainant's claims are barred, in whole or in part, by the provisions of section 1009 of the California Civil Code.

NINTH AFFIRMATIVE DEFENSE

Cross-Complainant alleges uses of water that are unreasonable and wasteful in violation of Article X, Section 2 of the California Constitution.

TENTH AFFIRMATIVE DEFENSE

Cross-Complainant is barred from seeking equitable relief because it has adequate legal remedies for any alleged injuries.

ELEVENTH AFFIRMATIVE DEFENSE

Cross-Complainant's claims are barred, in whole or in part, by the applicable statutes of limitation, including but not limited to California Code of Civil Procedure Sections 318, 319, 321, 338, and 343.

TWELFTH AFFIRMATIVE DEFENSE

The prescriptive claims asserted by governmental entity Cross-Complainant is ultra vires and exceed the statutory authority by which each entity may acquire property as set forth in Water code Sections 22456, 31040, and 55370.

THIRTEENTH AFFIRMATIVE DEFENSE

The relief sought in each and every cause of action contained in the First Amended Cross-Complaint would constitute an unjust enrichment of Cross-Complainants to the detriment of AVWS.

FOURTEENTH AFFIRMATIVE DEFENSE

AVWS alleges that it is the owner of certain real property overlying the groundwater identified in the First Amended Cross-Complaint and therefore has the prior and paramount right, presently and in the future, to extract groundwater.

FIFTEENTH AFFIRMATIVE DEFENSE

AVWS alleges that it is the owner of certain real property overlying a portion of the groundwater basin identified in the First Amended Cross-Complaint which real property is

permitted and entitled to be developed for the purposes of the construction, operation and maintenance of a groundwater recharge, storage, banking and extraction project, and AVWS has the prior and paramount right, presently and in the future, to develop its project as against any right alleged or asserted by Cross-Complainant, and each of them.

SIXTEENTH AFFIRMATIVE DEFENSE

Cross-Complainant is not entitled to the relief requested in that, by virtue of the doctrine of self-help, AVWS has protected and preserved its paramount overlying rights to extract groundwater presently and in the future.

SEVENTEENTH AFFIRMATIVE DEFENSE

Each and every cause of action contained in the First Amended Cross-Complaint is barred in whole or in part because the Cross-Complainants' claims are not ripe for adjudication.

EIGHTEENTH AFFIRMATIVE DEFENSE

AVWS alleges that Cross-Complainant is not entitled to declaratory relief or injunctive relief because the actual condition of the groundwater supply is not presently known and is not presently ascertainable to the degree of certainty required for declaratory relief or injunctive relief.

NINETEENTH AFFIRMATIVE DEFENSE

AVWS alleges that the relief sought by Cross-Complainant would constitute an illegal taking without compensation in violation of the United States Constitution and the California Constitution. Cross-Complainant lacks the authority to acquire the rights sought in the manner alleged in the First Amended Cross-Complaint.

TWENTIETH AFFIRMATIVE DEFENSE

AVWS is informed and believes and on that basis alleges that the groundwater basin underlying AVWS's real property is not in a state of overdraft and that the amounts withdrawn from it have not been nonsurplus supplies in excess of the safe yield.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The First Amended Cross-Complaint is defective and uncertain in that it cannot be ascertained there from the nature of the water rights that Cross-Complainant is claiming and the

nature of the water rights that Cross-Complainant claims that AVWS is asserting.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The First Amended Cross-Complaint is defective and uncertain in that it cannot be ascertained there from when the alleged prescriptive period, if any, commenced and ended.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The First Amended Cross-Complaint is defective and uncertain in that it cannot be ascertained therefrom that the alleged condition of overdraft and use of groundwater by Cross-Complainants, was actual, notorious, hostile and adverse to AVWS, for a continuous and uninterrupted period of time required by law.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The First Amended Cross-Complaint is defective and uncertain in that the legal descriptions of AVWS's real property, as to which Cross-Complainant claims to have acquired prescriptive rights, are not set out in the First Amended Cross-Complaint, and because it cannot be ascertained from the First Amended Cross-Complaint which of AVWS's properties the Cross-Complainant claims to have acquired prescriptive rights.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The First Amended Cross-Complaint is defective and uncertain in that a quantification of the prescriptive water rights that Cross-Complainant claims to have acquired cannot be ascertained therefrom.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The governmental entity Cross-Complainant was permissively pumping at all times.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Cross-Complainant lacks standing to bring the claims that are set forth in the First Amended Cross-Complaint.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Each and every cause of action contained in the First Amended Cross-Complaint is barred in whole or in part in accordance with Code of Civil Procedure section 389 on the ground that Cross-Complainant has failed to name, join, and have subject matter jurisdiction over an

indispensable and/or a necessary party.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over some or all of the matters alleged in the First Amended Cross-Complaint.

THIRTIETH AFFIRMATIVE DEFENSE

The governmental entity Cross-Complainant is seeking to transfer water right priorities and water usage is a project which will have significant effects on the Antelope Valley Groundwater Basin and the Antelope Valley. Said actions are being done without complying with and contrary to the provisions of California's Environmental Quality Act (CEQA) (Publ. Res. C. 21000 et. seq.).

THIRTY-FIRST AFFIRMATIVE DEFENSE

The First Amended Cross-Complaint, and each cause of action therein, is barred by the failure to exhaust available administrative remedies.

THIRTY-SECOND AFFIRMATIVE DEFENSE

AVWS incorporates by reference any other applicable affirmative defense asserted by any other responding Cross-Defendants to the First Amended Cross-Complaint as if fully set forth herein.

THIRTY-THIRD AFFIRMATIVE DEFENSE

AVWS has insufficient knowledge or information upon which to form a belief as to whether there may be additional, as yet unstated, affirmative defenses available, and therefore reserves the right to allege other affirmative defenses as they become appropriate or known through the course of discovery.

WHEREFORE, AVWS prays for relief as follows:

1. That Cross-Complainant take nothing as against AVWS by way of the First Amended Cross-Complaint on file herein, or
2. If the court determines that Cross-Complainant is entitled to any relief against AVWS, that AVWS be awarded the fair market value of their interest in any property taken by Cross-Complainant.

3. That AVWS's water rights be determined as prior and paramount to all those claimed by any other parties.
4. That AVWS be awarded attorney's fees as may be allowed by statute, or case law.
5. That AVWS be awarded costs of suit.
6. For such other and further relief as the Court deems just.

Dated: July 30, 2009

THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: 

SCOTT K. KUNEX, Esq., Attorneys for Antelope Valley Water Storage, LLC

PROOF OF SERVICE

1 STATE OF CALIFORNIA, COUNTY OF KERN

2 I, LEANN BANDUCCI, declare: I am and was at the times of the service hereunder
3 mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business
4 address is The Law Offices of Young Wooldridge LLP, 1800 30th Street, Fourth Floor,
5 Bakersfield, CA 93301.

6 On July 30, 2009, I caused the foregoing document(s) entitled as: ANSWER OF
7 CROSS-DEFENDANT ANTELOPE VALLEY WATER STORAGE LLC TO FIRST
8 AMENDED CROSS-COMPLAINT OF PUBLIC WATER SUPPLIERS to be served on the
9 parties via the following service:

10 X By Posting: I posted the document(s) listed above to the Santa Clara County Superior
11 Court website in regard to the Antelope Valley Groundwater matter pursuant to the Court's
12 Clarification Order. Electronic service and electronic posting completed through
13 www.scefiling.org.

14 X (By Mail) On the same date, at Bakersfield, California, pursuant to C.C.P. section
15 1013(a). By placing / / the original or / x / a true copy thereof enclosed in a sealed envelope. I
16 am readily familiar with the firm's practice of collection and processing of documents for
17 mailing. Under that practice it would be deposited with United States Postal Service on that
18 same day with postage thereon fully prepaid at Bakersfield, California in the ordinary course of
19 business.

20 Honorable Jack Komar
21 Santa Clara County Superior Court
22 191 North First Street, Department 17C
23 San Jose, CA 95113

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate and Trial Court Judicial
Services (Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

24 Superior Court of California
25 County of Los Angeles
26 Stanley Mosk Courthouse – Department 1, Room 109
27 111 North Hill Street
28 Los Angeles, CA 90012-3014

Executed on July 30, 2009, at Bakersfield, California.

I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.


LEANN BANDUCCI